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Book: Social Work in Scotland
Chapter: Criminal Justice Social Work

Steve Kirkwood

Introduction

Criminal justice social work (CJSW) in Scotland fulfils an important function of both the criminal justice system, in terms of responding to criminal behaviour, and the social welfare system, in the sense of supporting those who find themselves on the wrong side of the law. As with the criminal justice system more generally, CJSW is struck through with competing aims and obligations. It is intended to protect the public from criminal harm, reduce the likelihood of further offending, facilitate opportunities to make amends, provide community alternatives to imprisonment, facilitate the community (re)integration of those involved in offending, inform the courts regarding appropriate sentences and satisfy the needs of victims that justice is being done. At times these aims will be in tension with each other; for example, a prison sentence may protect the public from harm for a period but is less likely to reduce the chances of further offending than community alternatives. Criminal justice social workers also have competing obligations, particularly to the individual service user, the court, victims of crime and the wider public. It is therefore characterised by care and control dilemmas, which raise challenges for engaging with service users, ensuring legal obligations are met, sharing information, managing non-compliance and meeting ethical obligations.

Background

Why should society help those involved in offending behaviour? Raynor and Robinson (2009) highlight that religious and charitable organisations in the late 1800s did so primarily in order to 'save souls'. That is, they were intended for individuals' spiritual wellbeing so they could be moral people. However, from the turn of the 20th century, the rationale for helping those involved in offending shifted from spiritual redemption to creating productive and contributing members of the nation: becoming 'a good citizen rather than merely a good person' (Raynor & Robinson, 2009, p. 6). Latterly, addressing offending behaviour has been justified on the grounds of community safety. This suggests that different answers to the question – 'why help offenders?' – can lead to different practices in different places and points in time.

McNeill (2005) traced the origins of CJSW in Scotland back to one of the earliest probation schemes, created in Glasgow in 1905, which were intended to reduce the use of prison for defaulting on fines. The first probation officers were drawn from the police and had a clear focus on supervision rather than addressing needs. McNeill (2005) shows how the emphasis moved from supervision to 'treatment' with the Probation of Offenders (Scotland) Act 1931, which prohibited the police from acting as probation officers. From this time, probation took on a character of applying a supposedly 'scientific' approach to intervening with people involved in offending behaviour, with the identification of 'causes' of criminal behaviour and the selection of appropriate 'treatments'. However, from at least as early as the 1960s, there was concern that probation was seen as the individual getting 'let off'. Thus, tensions between supervision, treatment, punishment and alternatives to imprisonment have been evident for some time.

Key legislation and policy

Policy and legislation relating to CJSW reflects the tensions between the various objectives of justice, including reducing offending, protecting the public and addressing the welfare needs of those involved in offending behaviour. The Social Work (Scotland) Act 1968 brought probation and aftercare services within generic social work services. Social work became responsible for providing reports to the court and 'the supervision of, and the provision of advice, guidance and assistance for' those on community sentences or requiring supervision following release from prison (s.27.1). This explicit location of criminal justice services within social work, which continues to present day, marks Scotland as different from a number of other jurisdictions – including England and Wales – and aligns them with an explicit ethos of social justice and a concern for people's welfare.

Over time, legislation expanded the scope and range of community sentences. Most significantly, the Community Service by Offenders (Scotland) Act 1978 allowed individuals to be sentenced to a period of unpaid work as an alternative to imprisonment. Although it might be assumed that increasing the range of community sentences would reduce the use of imprisonment – and indeed this is often the stated intention of these legislative changes – rather it can have a reinforcing effect whereby each drives the other, reflected in the increasing use of both community sentences and imprisonment (McAra, 2008). As argued by McNeill and Beyens (2014), 'mass supervision' reflects the paradox at the heart of probation practice: it can divert people from prison yet the greater use of supervision and surveillance may draw more people deeper into the criminal justice system.

The National Objectives for Social Work Services in the Criminal Justice System, originally published in 1990, provided detailed guidance on the operation of CJSW services (Scottish Government, 2004). The objectives include providing alternatives to custody, addressing needs related to offending behaviour, assisting reintegration following imprisonment and assisting those affected by crime. The stakeholders include the individuals involved in offending, their family members, courts, the police, victims of crime and the wider public. Although guidance could be said to provide clarity for practice, in another sense it makes the tensions and dilemmas more pronounced as practitioners are required to manage competing obligations.

Following devolution in 1999, it could be assumed that Scotland would follow its distinctive approach to criminal justice. However, the Scottish Labour-Liberal Democrat government brought in policy measures that, if anything, brought it closer in line with England and Wales, with a greater emphasis on addressing antisocial behaviours (through the introduction of Antisocial Behaviour Orders), 'offender management' and public protection (McAra, 2008). When the Scottish National Party came to power in 2007, they pledged to reduce the use of short prison sentences, diverting to community sentences, and investing in rehabilitation. The Scottish Prisons Commission (2008) emphasised the high cost and low effectiveness of short prison sentences, and recommended that legislation should be brought in to require community sentences be used instead of prison sentences of six months or less, as well as recommending that 'paying back in the community should become the default position in dealing with less serious offenders' (p. 3). The resultant Criminal Justice and Licensing (Scotland) Bill included a presumption against prison sentences of six months or less. However, as a minority government they were unable to get this through parliament, so the final legislation – the Criminal Justice and Licensing (Scotland) Act 2010 – included only a presumption against prison sentences of three months or less. The legislation also significantly changed the structure of community sentences in Scotland, introducing Community Payback Orders as the main community sentence, with Supervision Requirements effectively replacing Probation Orders, and Unpaid Work Requirements effectively replacing Community Service Orders.

The new structure for community sentences was accompanied by a range of updated guidance entitled National Outcomes and Standards for Social Work Services in the Criminal Justice System (Scottish Government, 2010). The standards define the 'key outcomes' for CJSW as:

1. Community safety and public protection
2. The reduction of re-offending
3. Social inclusion to support desistance from offending

It is evident that all three of the 'outcomes' have an instrumental focus in terms of leading to a reduction in crime, whereas the earlier guidance included a range of wider objectives that were not all framed in these terms.

Despite these attempts to reduce the use of short prison sentences, imprisonment rates remain stubbornly high, even though crime has been decreasing (Scottish Government, 2015). Indeed, recent moves by the Scottish National Party Government may in fact increase the prison population, such as the Prisoners (Control of Release) (Scotland) Act 2015, which changed the rules governing early release for long-term prisoners. These contradictory legislative moves highlight how governments may struggle to reconcile competing criminal justice objectives, even where the same political party remains in power. Tracing policy and legislation back through time, we can see questions regarding the extent to which CJSW should be seen as a moral or a technical endeavour; whether, for instance, rehabilitation and reintegration should be seen only as means for reducing offending or as worthy ends in themselves (see McNeill, 2009). Relatedly, at times these responses are portrayed as 'help', at other times as 'punishment', and often as both. A drive to reduce the unnecessary use of custody is also evident over more than a hundred years of policy in Scotland, yet there are at times other policy moves that are likely to drive up imprisonment rates, and the increasing use of community sentences has not produced the intended reduction in the use of prison. At its core, CJSW in Scotland retains the welfare intentions of social work more generally, however it is strongly shaped and constrained by the criminal justice context in which it operates.

Themes and issues in current practice

Reducing the likelihood of further offending

The Risk-Need-Responsivity (RNR) model is the dominant model for addressing offending behaviour internationally (Bonta & Andrews, 2017). The *Risk principle* suggests that the level of intervention should be matched to the level of risk of offending, such that those who pose a high risk of re-offending or harm should receive an intensive intervention, whereas those who pose a low risk should receive minimal or no intervention. The *Need principle* suggests that interventions are most effective if they target 'criminogenic needs'. 'Criminogenic' means 'crime causing' (in the same way carcinogenic means 'cancer causing') and 'needs' implies that if the issue remains unaddressed it is likely to perpetuate offending behaviour (e.g., if the offending behaviour is fuelled by a drug addiction, and the drug addiction is not addressed, then the offending behaviour is likely to continue). Criminogenic needs are also referred to as 'dynamic risk factors', which is a similar concept and refers to those issues which empirical research shows are associated with risk of re-offending, and are 'dynamic' in the sense they are open to change (unlike 'stable risk factors' which are also associated with the risk of re-offending but cannot be changed, such as someone's criminal record). Bonta and Andrews (2017, p. 500) identify the major factors associated with offending behaviour, which include: history of antisocial behaviour, antisocial personality pattern, antisocial cognition, antisocial associates, family / marital relationships, school / work, leisure / recreation, and substance abuse. The *Responsivity principle* has two parts. *General responsivity* is the principle that

criminal justice practice should involve methods that are able to target and change dynamic risk factors, such as social learning and especially cognitive behavioural approaches. *Specific responsivity* means that interventions should be tailored to the specific needs of individuals, particular in terms of how they are best able to learn and engage with the intervention.

Although the RNR model provides clear principles for addressing offending behaviour, it is less clear regarding the skills that practitioners ought to use when working with those involved in offending behaviour. To address this issue, in recent years research has examined the skills related to reductions in re-offending, known as 'core correctional practice' or 'key practice skills'. A meta-analysis of 10 studies on this topic showed that a number of key skills are associated with reductions in re-offending, specifically: the effective use of authority, pro-social modelling, effective problem-solving strategies, the use of community resources and interpersonal relationship factors e.g., being warm, enthusiastic, and demonstrating good listening skills; Chadwick, Dewolf, & Serin, 2015). As argued by Raynor and Vanstone (2015), it transpires that the most important skills for addressing offending behaviour are *core social work skills*.

A more recent significant framework for addressing offender behaviour is known as the 'Good Lives Model' (GLM; Ward & Brown, 2004). This is based on the idea that all people are motivated by a number of core drivers common among humanity (e.g., knowledge, mastery, intimacy, happiness), referred to as 'primary goods', but sometimes the manner in which people seek to achieve these (known as 'secondary goods') are illegal, immoral or harmful (e.g., through theft or violence). The GLM suggests that criminal justice practice ought to identify people's primary goods and seek to support them in realigning their secondary goods so that they can achieve a worthwhile life in ways that is legal, moral and safe. This model is gaining prominence, particularly in relation to addressing sexual offending, and is currently the main model for addressing sexual offending in groupwork programmes in Scotland (known as the Moving Forward: Making Changes programme). Despite the growing interest in and use of the GLM, empirical research on its effectiveness is relatively scarce, and Bonta and Andrews (2017) have been critical of what it can add to criminal justice practice. Although sometimes presented as an alternative to RNR, in fact the GLM can be treated as compatible with RNR, such that practitioners could match the intensity of the intervention to levels of risk, focus on criminogenic needs, use methods that are most likely to change dynamic risk factors, consider individual learning needs, while working with people's individual motivations to work towards healthy and fulfilling lives. This approach highlights that criminal justice practice has moral as well as technical dimensions.

Desistance from crime

'Desistance' is the process of moving away from offending behaviour, and in this sense has parallels with the notion of 'recovery', for instance in relation to mental health and drug addictions (McNeill, 2006). McNeill (2006) outlined a 'desistance paradigm' for criminal justice practice, which involves shifting the focus from the intervention and practitioner onto the experiences of the individual who is involved in the process of reducing offending. He wrote:

'...offender management services need to think of themselves less as providers of correctional treatment (that belongs to the expert) and more as supporters of desistance processes (that belong to the desister).' (McNeill, 2006, p. 46)

Research on desistance focuses on the experiences of those involved in offending behaviour and in particular their experiences of moving away from offending behaviour. It has highlighted that factors in people's social world play an important role in their process of change. In particular, getting

married, having children, gaining employment are potential 'turning points' that are often associated with changes in people's 'trajectories' of offending behaviour. Research has also suggested that people's narratives about themselves, and in particular their identities, play a role in their desistance from offending (Maruna & Farrall, 2004).

Drawing on desistance research and theory, McNeill (2009) suggests that effective practice involves: helping people to improve their skills and abilities (human capital), using strengths-based approaches to build motivation for change, and supporting people to improve their social relationships (social capital). This research and theory has clearly been influential in Scotland and features in the National Outcomes and Standards (Scottish Government, 2010). However, shifting from individual practice that is heavily focused on skills and abilities, to work that can really assist people in improving their wider social relationships and networks, and in particular connecting with opportunities (such as meaningful and rewarding employment), remains more challenging.

Compliance

Related to the skills and approaches for addressing offending behaviour, practitioners are concerned with encouraging compliance with the requirements of community sentences and license conditions, and deciding how to respond to non-compliance. The National Outcomes and Standards highlight that criminal justice social workers should 'Consider non-compliance as an opportunity to work with the individual towards agreed outcomes – living within the boundaries of rules, sticking to commitments, solving problems, being accountable' (Scottish Government, 2010, p. 37). This allows non-compliance to be seen not merely as a negative, but as an opportunity, such that it can be turned into a point of learning or directed towards re-establishing commitment. Instituting breach procedures – that is, formally advising the court that the individual has not been compliant with the conditions of the order – does not necessarily mean that CJSW will cease to engage with the individual, and the guidance highlights that individuals should continue to be supported once breach procedures have begun, unless there are good reasons why it should not continue.

Robinson and McNeill (2008, p. 434) distinguish between 'formal compliance' – 'behaviour which technically meets the minimum specified requirements of the order' and 'substantive compliance' – 'active engagement and co-operation of the offender with the requirements of his or her order'. Ultimately, of course, community sentences are intended to instil longer term compliance with the law that persists beyond the period of the sentence (Robinson & McNeill, 2008). Robinson and McNeill explain that while formal compliance may also indicate substantive compliance, in some cases those who meet the formal criteria for compliance may do so in the absence of a deeper commitment to compliance with the law, whereas others may have a genuine commitment to desisting from crime, and yet may struggle to meet the formal requirements of their sentence. This highlights the importance of discretion in responding to compliance and particularly why practitioners should pay attention to the circumstances and dispositions underlying compliance and non-compliance.

Report writing

A significant aspect of the CJSW role in Scotland involves gathering evidence for and writing Criminal Justice Social Work Reports (previously known as Social Enquiry Reports) for the courts. The purpose of these reports is to assist sentencers by providing information on relevant community disposals and their appropriateness for a particular individual. Tata, Burns, Halliday, Hutton and McNeill (2008) undertook research into the process of writing Social Enquiry Reports and argued that the reports not only provided information, but had a 'persuasive' function in terms of creating a

narrative that would encourage sentencers to conclude that a community sentence would be appropriate. Such reports are not intended to involve 'recommending' a particular sentence, therefore criminal justice social workers must manage a delicate balance in terms of providing reports that are relevant and informative enough to assist sentencers in deciding on an appropriate sentence, and convincing in their conclusions, without overstepping the mark and being seen to recommend a particular sentence.

As explained by Halliday, Burns, Hutton, McNeill and Tata (2009, p. 421):

'Social workers are not primarily criminal justice actors; rather, they are professional social workers working in locally based social services but having to operate at the margins of the criminal justice field.'

This is reflected in report writers' tendency to be concerned with proposing 'realistic' sentences, meaning a sentence that they think the sheriff will treat as proportionate to the offence, out of concern that their views would not be taken seriously or might undermine the credibility of the profession (Halliday et al., 2009). Indeed, this concern for 'realism' is borne out by research into how sentencers read and use these reports, and, more worryingly, some admit to skim-reading the sections relating to the personal circumstances of the individual, which means they can miss important details, such as the presence of learning difficulties (Scottish Government, 2015; Tata et al., 2008). However, this can lead to criminal justice social workers undermining the intentions of their reports through the inclusion of details that contradict the overall welfarist narrative (Halliday et al., 2009).

It is important to note that the form and emphasis of these reports has changed since the time of this research, as Social Enquiry Reports have been replaced by CJSW Reports. In particular, the change to CJSW Reports occurred alongside the introduction of the standardised risk assessment tool, the Level of Service/Case Management Inventory (LS/CMI), and the new report format has greater emphasis on risk assessment that informs the conclusions regarding appropriate sentences. Generally, social workers and Sheriffs view these changes as having improved the quality of reports (Scottish Government, 2015).

The writing of CJSW reports is a clear instance where practitioners must balance their obligations towards the client, court and wider public. Moreover, report writing is a subtle craft, and the views on what constitutes 'quality' varies between sentencers and 'Even the same sentencer can seem to want conflicting things in the same report' (Tata et al., 2008, p. 849).

Future Directions

There are several recent and emerging aspects of CJSW that are likely to shape its development in future. These include: the co-production and personalisation of criminal justice services; holistic and trauma-informed approaches; community and restorative justice; and new technologies.

Co-production and personalisation

The broader 'personalisation agenda' for social work services, which is intended to increase the choice and direct involvement of service users in the delivery services, includes CJSW. However, as Weaver (2011) explains, criminal justice may be the most challenging area for applying this approach, given the role that such services play in terms of restricting and controlling aspects of people's behaviour. However, she suggests that its application here can be guided by the notion of 'co-production' – long-term relationships between stakeholders where they work together to produce services – where stakeholders include victims of crime and wider communities. She

suggests that this active involvement in the design and delivery of criminal justice services, and community justice more generally, may help people develop and exercise the capacities that are central to desistance as well as lead to services that are more credible, meaning and effective.

Holistic and trauma-informed approaches

Over the last few decades, there has been a concern regarding the treatment of women in the criminal justice system in Scotland, particularly in prisons. The most recent policy document on this, from the Commission on Women Offenders (2012), noted that the number of women imprisoned in Scotland had doubled within a ten-year period. It highlighted that, compared with men, these women tended to pose a lower risk of harm to society, had higher levels of drug and alcohol misuse, had greater levels of mental health issues, had more extensive histories of physical and sexual abuse, and were more likely to have dependent children. They recommended the use of holistic services and approaches that addressed women's trauma. The 218 Centre in Glasgow and the Willow Service in Edinburgh are examples of services that are intended to be more supportive and responsive to the needs of women than mainstream criminal justice services. Pate (2010) provides a framework for working with women involved in offending behaviour in Scotland in which she emphasises the importance of being pro-active, understanding the role of trauma, applying holistic, relational and strengths-based approaches.

Community and restorative justice

The Community Justice (Scotland) Act 2016 has replaced Community Justice Authorities with Community Justice Scotland, a national body responsible for monitoring and improving community justice in Scotland. It is clear from the definition of 'community justice' in the legislation that this really means the delivery of criminal justice services outside of prisons, rather than a broader notion of community justice that would encompass the empowerment of communities and notions of social justice. However, the legislation does have a focus on developing services in partnership with local and national bodies, and therefore an expanded response is possible. As mentioned by Weaver (2011), one form of co-production in criminal justice could involve restorative justice. Restorative justice is a process that involves those directly affected by a crime safely communicating about the effects of the crime and how to address its consequences. Although restorative justice-type approaches have been used in Scotland for several decades (and has historical antecedents), its availability has been relatively limited and it is usually only used in relation to minor crimes as diversion from prosecution (Kearney, Kirkwood, & MacFarlane, 2006). It has the scope to contribute to processes of desistance, through encouraging people to understand the impact of their offending and take steps to make amends, and its greater use may feature in the future of criminal justice in Scotland.

New technologies

New technologies are starting to shape the nature and delivery of criminal justice services in Scotland. This is most notable in the form of electronic monitoring for those on early release from prison on Home Detention Curfews and those on Restriction of Liberty Orders. However, Nellis (2014) explains that the scope for using electronic monitoring is much greater than has been applied in Scotland so far, including the use of Global Positioning System (GPS) technology and sobriety bracelets to monitor alcohol consumption, and he argues it has the potential to help contribute to a reduction in imprisonment rates. It is likely that these and emerging technologies are going to shape certain aspects of criminal justice services, if not completely revolutionise them.

Conclusions

CJSW in Scotland plays an important role in the justice system, operating at the intersection of welfare concerns, rehabilitation, reintegration, restrictions, punishment and desistance from crime. Effective practice draws on core social work skills and is both technical and moral in nature. The competing obligations within criminal justice mean that practitioners must be thoughtful in managing the care and control dilemmas at the heart of their practice, using discretion but within a policy context that emphasises the management of risk and public protection. Recent developments suggest the need for the greater involvement of service users, victims of crime and the wider public in the design and delivery of criminal justice services to ensure they are ethical, meaningful and effective.

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Further reading

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This book presents the Risk-Need-Responsivity model of addressing offending behaviour, the most influential approach globally, along with an overview of the theories and evidence underpinning the model.

Halliday, S., Burns, N., Hutton, N., McNeill, F., & Tata, C. (2009). Street-level bureaucracy, interprofessional relations, and coping mechanisms: A study of criminal justice social workers in the sentencing process. *Law and Policy*, 31(4), 405–428. <https://doi.org/10.1111/j.1467-9930.2009.00306.x>

This study provides helpful insight into the processes and dilemmas of writing social work reports for the courts.

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Although the policy and legislative context in Scotland has changed significantly since McNeill and Whyte's book was published in 2007, this remains a key text for understanding criminal justice social work in Scotland.

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